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LEGAL INDEMNITIES

# Right of Light Overview



## It is established law that we all have a right to receive daylight through the windows of our homes and offices.

A right accrues in a number of ways, being either expressly granted when the building was first built, or accumulated over time under the Prescription Act 1832. The right is automatically acquired if the light has been enjoyed through defined apertures of a building – windows and doors – uninterrupted for 20 years. **It applies to the property, not the owner, so you don't need to have occupied the property for 20 years.**



## A single Right to Light claim has the potential to significantly diminish profits, or even prevent the development altogether.

The case law that governs this right is constantly changing, and substantial compensation payouts, drastic alterations or injunctions against development are very real threats that can dramatically reduce profitability or stop the development altogether. A Right to Light Indemnity policy will respond to third-party claims, allowing the developer to manage risk and mitigate potential losses in an economical and efficient way. **The ability to negotiate with injured parties as soon as notification is made prevents costly delays and the financial penalties these may bring, thus expediting matters and allowing the project to proceed.**

In order to allow a development to proceed without the delay of awaiting the conclusion of Right to Light matters, **a developer can take out an insurance policy to protect themselves from the range of potential costs and diminution in value associated with a legal claim and any consequences of its outcome.**



**With our strong regional and national reputation in the legal indemnity sector, our specialist broking team streamlines the process of obtaining legal indemnity insurance solutions in a cost-effective way. We deal with a range of insurers, offering bespoke wordings and choice of market to suit the needs of individual developers, investors and legal advisors.**

# Right of Light Insurance – Small differences have a big impact

**We understand that speed, simplicity, and confidence are all key to the successful conclusion of a property transaction**, where completions are often delayed or aborted altogether due to Right to Light issues.

**Our Right of Light insurance policies can facilitate the process, helping to expedite deals on problem transactions.**

There are many options available when creating bespoke policy solutions for a Rights of Light policy and with that, comes a range of terminology that if not properly understood, can have a **huge impact** on the type of cover available for your client.



## ‘Wait and See’

This type of cover prevents you from having contact with those properties covered under the policy and, in the event of a claim, will respond accordingly up to the full limit of indemnity (which is usually based on Gross Developed Value of the site).

## ‘Agreed Conduct’

This type of cover will allow a developer to enter into negotiations with those property owners that are deemed as having an actionable injury to their property. There will be an excess in place which is generally based upon the upper compensation levels provided by the surveyors’ rights of light assessment, and the policy would respond should matters progress to court or if the agreed compensation figure exceeds the excess. Importantly, legal costs and professional costs (such as surveyors etc) would not be covered for those properties that are structured on an agreed conduct basis.

## A changing market approach

Naturally, developers would prefer not to have to negotiate with any third parties as this can result in protracted and costly negotiations. In light of this, there is an increasing trend in the market to offer cover with a ‘reactive excess’. This is essentially a combination of the above two approaches in that no approaches are made to the injured parties but, in the event of a claim, the reactive excess applies to those compensatory payments but does not cover the legal and professional costs, unlike a traditional ‘wait and see’ excess, which would.

**It is, therefore, crucial to use a specialist Rights of Light broker when sourcing Insurance, who can explain the differences in terminology and importantly, the impact this will have on the offer of cover available and how this will apply in practice.**

**There is a specialist, but limited insurance market for risks of this type and as expert brokers in this sector, Thomas Carroll has access to a range of insurers who can provide protection against these risks.**

**Thomas Carroll Legal Indemnities understand the complexities of Right to Light issues and recognise the difference in policy wordings offered by insurers. Utilising our expertise, we obtain competitive premiums and the best possible terms to tailor bespoke solutions which are best suited to your development.**

# Case Studies

## Right of Light

We were approached by a developer who had obtained Right of Light quotations for a large city centre development. The only terms they could obtain were on a proactive, agreed conduct basis that did not suit their needs. Within 24 hours of enquiry, we had obtained traditional “wait & see” cover without excess, **saving the developer £70,000.00** from their development costs and removing the unwanted headache of protracted negotiations with neighbouring properties.

We were approached by a developer who had obtained Right of Light quotations that would only cover a limited number of injured properties, excluding some with significant potential loss. We were able to obtain terms to include all identified injured properties plus unidentified injured properties that could have sought prescriptive rights challenge, **whilst reducing the premium they had initially obtained by over £50,000.**

We were approached by a developer who had been undertaking protracted negotiations with neighbouring properties to release rights of light, with negotiations taking over 2 years without completion. In order to facilitate funding of development, we were able to negotiate a mix of both agreed conduct cover and wait & see cover with a number of properties despite attempts to contact being made, **allowing the deal to progress.**

## Listed Building Consent

Our client approached us for cover on a large building in a prominent city centre location whereby works had been carried out both externally and internally without the appropriate listed building consent within the last 4 years. The majority of the market declined to quote with some markets only willing to offer lender only cover which wasn't suitable for our client as there was no funder involved.

We were able to create a unique policy with one of our insurer partners which provided cover for the owner of the property and their successors in title which **enabled a £20,000,000 transaction to proceed** which would otherwise have been aborted.

## Access & Title Issues

We were approached by a law firm acting for landowner seeking to sell property for residential development. There were a number of title and access issues that had taken over a year to try and resolve without success, impacting the potential value of the land. Within 2 days of approach, **we were able to offer a policy that covered all defects and allowed the sale to progress at market value.**

**Our experienced and qualified Legal Indemnities team are available to offer advice and guidance**

**Call us today  
02920 853788**

